



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1194 (Advisory Opinion Proceeding)]

Certain High-Density Fiber Optic Equipment and Components Thereof; Notice of a Commission Determination to Adopt an Initial Advisory Opinion and not to Review an Initial Determination Terminating the Advisory Opinion Proceeding Based on a Joint Stipulation; Termination of the Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to adopt the presiding administrative law judge's ("ALJ") initial advisory opinion ("IAO") and not to review the initial determination ("ID") (Order No. 8), terminating the advisory opinion proceeding based on a joint stipulation. The advisory opinion proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202-205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on March 24, 2020, based on a complaint filed on behalf of Corning Optical Communications LLC ("Corning") of Charlotte, North Carolina. 85 FR 16653-54 (Mar. 24, 2020). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation

of certain high-density fiber optic equipment and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,020,320 (the “’320 patent”), 10,444,456 (the “’456 patent”), 10,120,153 (the “’153 patent”), 8,712,206 (the “’206 patent”), and 10,094,996 (“the ’996 patent”). *Id.* The ’996 patent was subsequently terminated from the investigation. *See* Order No. 11 (July 29, 2020), *unreviewed by* Comm’n Notice (Aug. 13, 2020). The Commission’s notice of investigation named thirteen respondents including, among others, Panduit of Tinley, Illinois; FS.com Inc. of New Castle, Delaware; Leviton Manufacturing Co., Inc. of Melville, New York; and The LAN Wirewerks Research Laboratories Inc. d/b/a Wirewerks of Quebec, Canada; and The Siemon Company of Watertown, Connecticut (collectively, “Respondents”). *See* Comm’n Op. at 3-5 (Aug. 23, 2021). The remaining respondents were either found in default pursuant to Commission Rule 210.16 or terminated from the investigation based on withdrawal of the allegations in the complaint or a settlement agreement. *Id.* The notice of investigation also named the Office of Unfair Import Investigations (“OUII”) as a party. *Id.* at 4.

On March 23, 2021, the ALJ issued a final ID finding a violation of section 337 with respect to claims 1 and 3 of the ’320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the ’456 patent; claims 9, 16, 23, and 26 of the ’153 patent; and claims 22 and 23 of the ’206 patent (collectively, “Asserted Patents”).

On May 24, 2021, the Commission determined to review the final ID in part. 86 FR 28890-93 (May 28, 2021). On August 3, 2021, the Commission determined that Corning established a violation by Respondents of section 337 with respect to claims 1 and 3 of the ’320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the ’456 patent; claims 9, 16, 23, and 26 of the ’153 patent; and claims 22 and 23 of the ’206 patent. 86 FR 43564-66 (Aug. 9, 2021). Among other findings, the Commission affirmed with modifications the ID’s finding that Panduit induced infringement of the asserted claims of the ’320, ’456, and ’153 patents and adopted the ID’s finding that Panduit’s accused products did not directly infringe the ’206 patent.

As a remedy, the Commission determined to issue a general exclusion order (“GEO”) prohibiting the entry of high-density fiber optic equipment and components thereof that infringe one or more asserted claims of the Asserted Patents; and cease and desist orders (“CDOs”), including one directed to Panduit.

On April 18, 2022, Panduit filed a request for an advisory opinion that three new fiber optic equipment designs that it developed do not infringe any asserted claims of the Asserted Patents and are therefore not covered by the GEO and CDO issued in this investigation. Panduit’s new designs include: (1) a patch panel design with a density of 192 fiber optic connections in a 1U space; (2) a patch panel design with a density of 144 fiber optic connections in a 1U space; and (3) a new enclosure design with a density of 192 fiber optic connections in a 1U space (collectively, “New Designs”). On April 28, 2022, Corning and OUII filed responses to Panduit’s request.

On May 18, 2022, the Commission determined to institute an advisory opinion proceeding to ascertain whether Panduit’s New Designs infringe claims 1 and 3 of the ’320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the ’456 patent; claims 9, 16, 23, and 26 of the ’153 patent; and claims 22 and 23 of the ’206 patent, and are covered by the remedial orders issued in this investigation. The Commission further determined to refer the matter to the CALJ for assignment to an ALJ for appropriate proceedings and the issuance of an IAO at the earliest practicable time, preferably within 120 days of institution but no later than 7 months after institution. The ALJ was directed to set a target date at two months following the date of issuance of the IAO. The following entities were named as parties to the proceeding: (1) Panduit; (2) Corning; and (3) OUII.

On July 18, 2022, Panduit filed a motion requesting entry of an IAO finding that its New Designs are not subject to the remedial orders and termination of the advisory opinion proceeding. Order No. 8 (Jul. 20, 2022) at 2. Corning did not oppose the motion and OUII filed a response supporting the motion. *Id.* The motion included a Joint Stipulation by Corning and

Panduit that Panduit's New Designs are not covered by the GEO and the CDO. *Id.* at 2-3.

In view of the private parties' Joint Stipulation and the remedial orders, on July 20, 2022, the ALJ issued an IAO finding that Panduit's New Designs do not infringe claims 1 and 3 of the '320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent, and that Panduit's New Designs are not covered by the remedial orders issued in this investigation. *Id.* at 3. Accordingly, the ALJ granted the motion to terminate the advisory opinion proceeding as an ID. No submissions were filed regarding the IAO and no petitions for review of Order No. 8 were filed.

The Commission has determined to adopt the IAO as its final advisory opinion and has determined not to review the ID portion of Order No. 8 terminating the proceeding. The advisory opinion proceeding is terminated.

The Commission vote for this determination took place on August 19, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: August 19, 2022.

Katherine Hiner,
Acting Secretary to the Commission.

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